IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4343 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRISH R GUPTA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR SJ DAVE, AGP for Respondent Nos.1 to 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 24/07/2000

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 8-8-1999 passed by the District Magistrate, Ahmedabad in exercise

of powers under Section 3(2)) of the PBMA Act, 1980 with a view to prevent the petitioner from black marketing essential commodities like kerosene (S.K.A.O.) and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene (S.K.A.O.) essential to the community.

2. Challenging the order of detention, it is contended by Mr.D.M.Thakkar, learned advocate for the petitioner, that though the authority has recorded the statements of various witnesses, the same has not been taken into consideration while passing the order of detention and according to him, non-consideration of these statements at the time of passing the order of detention prejudiced the petitioner in making an effective representation. The petitioner by way of amendment has contended that a representation dated 8-5-2000 was addressed to the detaining authority through his advocate by registered post A/D and though it has been received by the detaining authority on 10-5-2000, the same has been forwarded to the State Government after a delay of seven days and, therefore, the delay of seven days in forwarding the representation to the State Government is fatal as said delay has not been properly explained by the detaining authority. Learned APP has fairly agreed to the same.

3. I have gone through the order of detention and other relevant documents. It appears that though statements of various witnesses have been recorded by the authority and copies of the same supplied to the petitioner along with the grounds of detention with index list 1 to 23, those statements have not been taken into consideration while passing the detention order. Further it appears that the representation dated 8-5-2000 made by the petitioner has been received by the detaining authority on 10-5-2000, but the same has been forwarded to the State Government after a period of seven days.

4. It has been held in a case of Urmilaben Navnitlal Gandhi Vs. The Commissioner of Police, Surat City and Others, 1994(2) G.L.H. (U.J.) 10 at head note (A) as under:

> "(A) Preventive Detention--Gujarat Prevention of Anti-Social Activities Act, 1985--Delay of five days in considering representation not properly explained--Held, detention invalid."

In the above unreported judgment, a representation of the

detenu dated 12th October, 1993, which was received by the detaining authority on 14th October, 1993 was rejected on 15th October, 1993. The said representation was forwarded to the State Government on 16th October, 1993, but the office forwarded it to the State Government on 19th/21st October, 1993. It was received by the State Government on 26th October, 1993 and rejected on 27th October, 1993. The Court, applying the ratio in Harish Pahava Vs. State of Uttar Pradesh, AIR 1981 SC 1126, has observed in the above unreported judgment that the said delay of five days, i.e. from 16th October, 1993 to 21st October, 1993 in forwarding the representation was unreasonable and not properly explained vitiating the continued detention of the detenu.

5. Whereas in the instant case, it appears that though representation dated 8-5-2000 was received by the authority on 10-5-2000, it was forwarded to the State Government after a delay of seven days. It is to be noted that said delay of seven days in forwarding the representation has not been satisfactorily explained by the respondents. As representation of the petitioner has not been forwarded by the authority in time, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal.

6. In view of the above, the petition is allowed. The order of detention dated 8-8-1999 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Girish R. Gupta is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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